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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 18, 2000

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUA000028

Ex Parte: In the matter concerning the separation of regulated and unregulated businesses of utility consumer services cooperatives and utility aggregation cooperatives.

ORDER PRESCRIBING NOTICE AND INVITING COMMENTS

Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia governs the conduct of Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives. Section 56-231.34:1 applicable to Utility Consumer Services Cooperatives, and § 56-231.50:1, applicable to Utility Aggregation Cooperatives, collectively govern relations between cooperatives and their affiliates that are engaged in businesses that are not regulated utility services.

Sections 56-231.34:1 and 56-231.50:1 also direct the Virginia State Corporation Commission (“Commission”) to promulgate regulations governing the conduct of cooperatives for the purpose of promoting effective and fair competition between such cooperatives’ affiliates and other persons engaged in the same or similar businesses that are not regulated utility services. Additionally, these statutes direct the Commission to establish codes of conduct detailing permissible relationships between such cooperatives and their affiliates. In establishing these codes, the Commission is required to address, among other issues, the sharing of customer information between cooperatives and such affiliates; affiliate use of cooperative name, logo or

trademarks; and sharing of vehicles, office space and employees by cooperatives and such affiliates.

The regulations to be adopted in this proceeding will implement the provisions of Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia governing the relations between Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives and non-regulated affiliates thereof.

Upon consideration whereof, the Commission is of the opinion and finds that notice of this proposed rulemaking should be published in newspapers of general circulation throughout the Commonwealth; that this Order should be published in the Virginia Register of Regulations and that interested persons should be afforded an opportunity to file written comments or request a hearing on the proposed regulations appended hereto as Attachment A. Accordingly,

IT IS ORDERED THAT:

(1) Interested persons may obtain a copy of this Order, together with a copy of the proposed rules upon which comment is sought (Attachment A hereto), by directing a request in writing for the same to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such requests shall refer to Case No. PUA000028.

(2) A copy of this Order and the proposed regulations shall also be made available for public review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during its regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m.

(3) On or before May 22, 2000, any person desiring to comment upon the proposed regulations shall file an original and fifteen (15) copies of their comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, making reference in such comments to Case No. PUA000028. Such comments should set forth the person's interest in this proceeding, and if such person objects to certain provisions of the proposed regulations, proposed alternative language for the regulations should be included in such person's comments.

(4) Any person desiring a hearing in this matter shall file such a request with their comments on or before May 22, 2000, and shall state in detail why a hearing is necessary. Such a request should identify the factual issues likely in dispute upon which the person seeks a hearing, together with the evidence expected to be introduced at any hearing. If no sufficient request for a hearing is received, the Commission may enter an order promulgating regulations upon the basis of the written pleadings filed.

(5) On or before May 2, 2000, the Commission will cause to be published the following notice as classified advertising on one occasion in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A PROCEEDING TO
ESTABLISH REGULATIONS CONCERNING PERMISSIBLE
RELATIONS BETWEEN ELECTRIC COOPERATIVES AND
THEIR NON-REGULATED AFFILIATES
CASE NO. PUA000028

Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia governs the conduct of Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives. Section 56-231.34:1 applicable to Utility Consumer Services Cooperatives, and § 56-231.50:1, applicable to Utility Aggregation Cooperatives, collectively govern relations between cooperatives and their affiliates that are engaged in businesses that are not regulated utility services.

These statutory provisions also direct the Virginia State Corporation Commission ("Commission") to promulgate regulations governing the conduct of cooperatives for the purpose of promoting effective and fair competition between such cooperatives' affiliates and other persons engaged in the same or similar businesses that are not regulated utility services. Additionally, they require the Commission to establish codes of conduct detailing permissible relationships between such cooperatives and their affiliates. In establishing these codes, the Commission is required to address, among other issues, the sharing of customer information between cooperatives and such affiliates; affiliate use of cooperative name, logo or trademarks; and sharing of vehicles, office space and employees by cooperatives and such affiliates.

By Order entered on April 18, 2000, the Commission established a proceeding to consider regulations proposed by the Commission's Staff concerning the matters described above. Interested persons should obtain copies of the Commission's April 18, 2000, Order with attached proposed regulations from the Clerk of the Commission at the address listed below. The Order and proposed regulations will also appear in the May 8, 2000, issue of The Virginia Register of Regulations.

A copy of the Order Prescribing Notice and Inviting Comments, together with the proposed regulations, may be reviewed from 8:15 a.m. to 5:00 p.m., Monday through Friday, in the State Corporation Commission's Document Control Center located at 1300 East Main Street, Tyler Building, First Floor, Richmond, Virginia 23219.

Any person desiring to comment upon the proposed regulations shall file, on or before May 22, 2000, an original and fifteen (15) copies of their comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. The comments should set forth the person's interest in this proceeding, and if a person objects to certain provisions in the proposed regulations, such person should propose alternative language for the regulations in their comments. All such comments should refer to Case No. PUA000028.

Any person desiring to request a hearing in this matter shall file such a request with their comments on or before May 22, 2000, and shall state in detail why a hearing is necessary. Such a request should identify the factual issues upon which the party seeks

hearing, together with the evidence expected to be introduced at any hearing. If no sufficient request for hearing is received, the Commission may enter an order promulgating regulations upon the basis of the written pleadings filed.

All communications to the Commission should be directed to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and should refer to Case No. PUA000028.

THE DIVISION OF PUBLIC UTILITY ACCOUNTING OF THE
VIRGINIA STATE CORPORATION COMMISSION

(6) On or before May 31, 2000, the Division of Public Utility Accounting shall file with the Clerk of the Commission proof of the publication of the notices required herein.

Chapter 203.
REGULATIONS GOVERNING THE SEPARATION OF REGULATED AND
UNREGULATED BUSINESSES OF UTILITY CONSUMER SERVICES COOPERATIVES
AND UTILITY AGGREGATION COOPERATIVES.

20 VAC 5-203-10. Applicability and scope.

These regulations are promulgated pursuant to the provisions of Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia, and they apply to Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives subject to the provisions thereof. Section 56-231.34:1, applicable to Utility Consumer Services Cooperatives, and § 56-231.50:1, applicable to Utility Aggregation Cooperatives, address relations between cooperatives and their affiliates that are engaged in businesses that are not regulated utility services.

These statutory provisions direct the Virginia State Corporation Commission to promulgate regulations governing the conduct of cooperatives for the purpose of promoting effective and fair competition between such cooperatives' affiliates and other persons engaged in the same or similar businesses that are not regulated utility services. Additionally, these statutes direct the Virginia State Corporation Commission to establish codes of conduct detailing permissible relationships between such cooperatives and their affiliates. In establishing these codes, the Commission is directed to address, among other things, the sharing of customer information between such cooperatives and affiliates; affiliate use of cooperative name, logo or trademarks; and sharing of vehicles, office space and employees by such cooperatives and affiliates.

20 VAC 5-203-20. Definitions.

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

“Commission” means the Virginia State Corporation Commission.

“Cooperative” shall have the meanings set forth in §§ 56-231.15 and 56-231.38.

“Affiliate” shall have the meanings set forth in §§ 56-231.15 and 56-231.38.

“Non-regulated affiliate” means any affiliate of a cooperative engaged in businesses that are not regulated utility services.

“Regulated utility services” means utility services that are subject to regulation as to rates or service by the Virginia State Corporation Commission.

20 VAC 5-203-30. Relations between cooperatives and affiliates thereof not engaged in regulated utility services.

A cooperative shall file with the Director of the State Corporation Commission's Division of Public Utility Accounting a listing and description of internal controls it has in place that are designed to prevent: (i) cost-shifting or cross-subsidies between any cooperative and its non-regulated affiliate; and (ii) anticompetitive behavior or self-dealing as between any cooperative and its non-regulated affiliate. Such information shall, in each instance, be filed at least 45 days before any cooperative and its nonregulated affiliate share any services.

20 VAC 5-203-40. Codes of conduct governing cooperatives and affiliates thereof not engaged in regulated utility services.

Except as otherwise provided in any Commission order or regulation, any cooperative subject to the provisions of this chapter shall be governed by the following codes of conduct when transacting business within this Commonwealth with a non-regulated affiliate.

1. A cooperative shall not give any preference related to the provision of its regulated electric service to a non-regulated affiliate over the interest of any non-affiliated organization.
2. A cooperative may provide customer lists and other customer information to its non-regulated affiliate only if such information is made available to third party competitors on equal terms and conditions.
3. Joint advertising and marketing between a cooperative and its non-regulated affiliate shall be permitted only if such advertising and marketing services are made available to third party competitors on equal terms and conditions.
4. A cooperative's name, logo or trademark may be used by a non-regulated affiliate provided such use is not misleading. A disclaimer that clearly and conspicuously discloses that the non-regulated affiliate operates independently of the cooperative shall accompany such use. Such disclaimers shall not be required on company vehicles, clothing, trinkets, writing instruments, or similar promotional materials.
5. Employees of the cooperative may provide services to non-regulated affiliates provided such services are not anticompetitive or discriminatory.
6. A regulated cooperative and its non-regulated affiliates may share the use of vehicles, equipment and office space provided such sharing is not anticompetitive or discriminatory.